



NEW YORK  
REGIONAL OFFICE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
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NEW YORK, NY 10281-1022

October 15, 2021

**By ECF**

Hon. Analisa Torres  
U.S. District Court  
Southern District of New York

Re: *SEC v. Ripple Labs, Inc.*, No. 20-cv-10832 (AT) (SN)

Dear Judge Torres:

Pursuant to Rule I(C) of this Court's Individual Practices, Plaintiff Securities and Exchange Commission ("SEC") respectfully requests that the Court extend the expert rebuttal report deadline to November 12, 2021, and the expert discovery deadline from November 12, 2021 to January 14, 2022, to permit the parties sufficient time to prepare rebuttal reports and depose a minimum of 14 expert witnesses. In this case alleging that Defendant Ripple Labs, Inc. ("Ripple"), together with Individual Defendants Bradley Garlinghouse ("Garlinghouse") and Christian Larsen ("Larsen"), made over \$1 billion in unlawfully unregistered securities offerings, the SEC's proposed extension would complete expert discovery as to Ripple within eleven months of the Amended Complaint's filing and within approximately ten months of Ripple's Answer. Ripple consents to an extension of the rebuttal report deadline until November 12, but opposes the January 14 deposition deadline, as set forth below. (A proposed Order is attached as Exhibit A.)

The requested extension would not affect any other deadlines in this case. The parties previously jointly requested an extension of the expert discovery deadline, based on the need to reschedule an Individual Defendant's deposition due to the unexpected illness of his attorney. D.E. 312. The Court granted the parties' request, and in the same order, adjourned *sine die* the deadline for the parties to exchange their respective Statements of Material Facts pursuant to Local Civil Rule 56.1 and their pre-motion letters regarding motions for summary judgment, pending resolution of the Individual Defendants' motions to dismiss and the SEC's motion to strike Ripple's "fair notice" affirmative defense.<sup>1</sup> D.E. 313.

Ripple consents to the SEC's request to extend the rebuttal reports deadline to November 12, 2021. But Ripple opposes the request to extend the close of expert discovery until January 14, 2022, and intends to file its opposition to this letter motion on October 18, 2021. Based on Ripple's earlier position that it would not accept any extensions to the discovery schedule, the SEC offered a

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<sup>1</sup> Individual Defendants may seek to identify additional experts as necessary—and have agreed that they would not object to the SEC doing so—after the additional 120-day fact discovery period following the Court's resolution of the Individual Defendants' motions to dismiss. *See* D.E. 48 ¶ 14.

compromise that expert discovery be completed by December 22. But Ripple rejected that offer. In doing so, Ripple now claims that extending the expert discovery schedule beyond December 10, 2021—a date Ripple claims would provide sufficient time for the parties to complete a minimum of 14 expert depositions in 18 business days, given the Thanksgiving holiday—“would likely impact the briefing schedule for summary judgment motion[s].” *See* Exhibit B (October 15, 2021 A. Ceresney email). However, as set forth above, there is no such schedule in light of the Court’s latest Order on the issue (D.E. 313).

Moreover, expert discovery has commenced with an incomplete factual record, and the case is even less ready for summary judgment motions. First, on September 1, 2021, Magistrate Judge Netburn granted the SEC’s motion to compel Ripple to produce certain instant messages among its employees, but Ripple has not completed its production of responsive documents and has not provided any timetable by which it will be complete. D.E. 327. Second, the parties have four discovery motions currently pending before Magistrate Judge Netburn: (i) Defendants’ motion to pierce the SEC’s deliberative process privilege and other privileges as to many of the SEC’s internal communications and communications with other law enforcement agencies (which will not be fully briefed until October 22, 2021); (ii) the SEC’s motion for a protective order relieving it from answering over 29,000 requests for admission that Defendants served on the SEC in the last six hours of fact discovery; (iii) Ripple’s and Larsen’s motion to compel further responses to certain interrogatories; and (iv) the SEC’s motion to compel Ripple to conduct a reasonable search for and produce certain video recordings of internal staff meetings involving Individual Defendants and key executives. If Magistrate Judge Netburn grants any of the pending motions to compel, at minimum, the parties would need additional time to review and produce the documents at issue.

The SEC’s proposed extension is fair and reasonable under the circumstances and should be granted for good cause. Fed. R. Civ. P. 16(b)(4). On October 4, 2021, pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), Defendants served the SEC with the reports of eight testifying experts, and the SEC served Defendants with the reports of five testifying experts. Combined, the reports total in excess of 600 pages and address trading and economic analyses, accounting and tax issues, and the sophisticated blockchain technology underlying XRP. The reports also cite thousands of underlying documents on which the experts’ opinions are based.

Pursuant to the existing expert discovery schedule (reflected in D.E. 312 and by the parties’ previous agreement), rebuttal expert reports are due on October 29, 2021, and expert discovery closes nine business days later, on November 12, 2021. The parties met and conferred and have determined that Defendants plan to disclose at least one additional expert to rebut an SEC expert (and will not rebut one SEC expert) but have not made any definitive commitment to retain only one additional expert, and the SEC also may disclose an additional rebuttal expert. Defendants’ proposal that the parties depose at least 14 experts—possibly more, depending on how many new rebuttal experts the parties ultimately introduce—in at most 19 business days (assuming Thanksgiving is the only day off the week of November 22) and during which time the parties and their experts need to digest and analyze multiple rebuttal reports, is unreasonable and unnecessary under the circumstances.

Given the number of experts, the breadth of the issues raised in the expert reports (and in the forthcoming rebuttal reports), and the vast amount of material on which the reports are premised, the SEC respectfully submits that the modest extension described here is appropriate for the SEC to properly prepare its experts for their depositions and to prepare to depose Ripple’s experts. The SEC’s proposed extension would not alter any other deadlines in this case, and would not prejudice

Defendants in any material way.<sup>2</sup> The SEC's proposal also takes into account that the Thanksgiving and December holidays fall within the period of its request, limiting the number of available days for depositions. Accordingly, the SEC respectfully requests the Court grant the requested extension for good cause shown as set forth above and in Exhibit A.

Respectfully submitted,

/s/ Mark R. Sylvester  
Mark R. Sylvester

cc: All counsel of record (by ECF)

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<sup>2</sup> Ripple asserts that an extension of the expert discovery schedule is prejudicial “due to the significant harm to Ripple’s business and XRP markets this suit is causing.” Ex. B. Ripple’s claim of prejudice is belied by its continued robust sales of XRP, notwithstanding the pendency of this litigation. *See* Ripple’s Q2 2021 XRP Markets Report (reporting the Ripple sold over \$150 million worth of XRP in the first quarter of 2021 and over \$157 million worth of XRP in the second quarter of 2021), *available at* <https://ripple.com/insights/q2-2021-xrp-markets-report/>. Similarly, XRP’s price closed at approximately 25 cents on the day after this lawsuit was filed, December 23, 2020, and its price closed yesterday, October 14, 2021, at \$1.13. *See* Historical Data for XRP, CoinMarketCap, *available at* <https://coinmarketcap.com/currencies/xrp/historical-data/>.